

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Ackerman Analyst: Roger Lackey Bill Number: SB 399

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 06-04-2002

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Business Organizations Conversions

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as amended May 25, 2002.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 25, 2002, STILL APPLIES.

OTHER - See comments below.

## SUMMARY

This bill would establish procedures for the conversion of corporations into limited liability companies (LLC), limited partnerships (LP), or general partnerships. This bill also would establish procedures for the formation of a corporation from the conversion of a LLC, LP, or general partnership.

This analysis will only discuss the bill to the extent it impacts the department.

## SUMMARY OF AMENDMENT

The June 4, 2002, amendments revised language related to the failure of a converting entity to provide written notice of the conversion to its creditors. The amendments provide that failure to comply with this provision would not affect certain conditions of the conversion including the validity of the conversion.

The remainder of the department's analysis of the bill as amended May 7, 2001, still applies. The implementation and policy considerations addressed in the department's prior analysis are included below for convenience.

## POSITION

Pending.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

6/20/02

### IMPLEMENTATION CONCERNS

This bill provides that a corporation that converts to another entity such as an LP would be for all purposes the same entity that existed before the conversion. However, the bill also provides that the filing of a statement of conversion has the same effect as the filing of a certificate of dissolution by the converting entity.

The bill is silent on the tax consequences of any conversion. For tax purposes, corporations, LPs, and LLCs have distinct filing requirements and tax liabilities, and a conversion transaction such as those described in the bill may have significant tax consequences. As a result, the FTB would administer the bill by requiring the converted entity to file a short-period return for the taxable year ending on the date of cancellation. The new entity would then be subject to all of the filing requirements and tax obligations for that new entity from the date of conversion.

### **ARGUMENTS/POLICY CONCERNS**

This bill would permit an entity to dissolve or cancel (via conversion) without obtaining a tax clearance certificate. Therefore, the converting entity would not have to resolve its tax debt before cancellation or withdrawal, as required by current law. However, under this bill, the new entity would be liable for the debts of the converted entity.

### **LEGISLATIVE STAFF CONTACT**

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